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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,956	07/15/2003	Terrence P. Meier	13743	7793

7590

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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/619,956

Applicant(s)

MEIER ET AL.

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Withdrawn Rejections

1. The 35 U.S.C. 102(b) rejection of claims 1 – 6, 18, 19 and 23 – 27 as anticipated by Brown in the paper dated November 8, 2004 is withdrawn due to Applicant's arguments and amendments in the paper dated May 6, 2005.
2. The 35 U.S.C. 103 rejection of claims 7 – 9 and 20 – 22 over Brown in view of Know, III et al. in the paper dated November 8, 2004 is withdrawn due to Applicant's arguments and amendments in the paper dated May 6, 2005.
3. The 35 U.S.C. 112 2nd paragraph rejection of claims 1 – 9 and 18 - 27 in the paper dated November 8, 2004 is withdrawn due to Applicant's arguments and amendments in the paper dated May 6, 2005.

New Rejections

Cited References

4. The Knox, III et al. reference, which was inadvertently left off the PTO-892 form in the November 8, 2004 Office action, has been listed on the current PTO-892 form with this Office action.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 – 6, 18, 19 and 23 – 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (USPN 5,203,470).

Brown discloses a flange having first and second sides (Figure 1, #16 and Column 2, lines 45 – 47) with a spout extending upwardly from the first side of the flange (Figure 1, #15). As seen from Figure 1, the flange and spout are integral with one another. The flange and spout are formed from a single first material, high density polyethylene (Column 3, lines 40 – 41), while the material, bag, heat sealed/molded over the flange (Column 4, lines 25 – 25 and 42 – 44) is made from an ethylene octene material such as liner low density polyethylene (Column 3, lines 40 – 51). The material of the bag is a multilayer film formed with an outer layer of sealing media that bonds with the material of the spout (Column 3, lines 53 – 55). A thread is formed on an outer surface of the spout (Column 2, lines 50 – 52). The material that is molded over through heat sealing, or covering the flange of the spout, is formed from a second material different from the first material with a lower density (Column 3, lines 40 – 52). Since both the first and second materials are a high density polyethylene and a ethylene octene, it is inherent that the first material would have a melting point temperature about 110 °F greater than a melting point temperature of the second material and the first material has a melting point temperature of

about 265 °F and the second material has a melting point temperature of about 155 °F while have a density of about 0.875 g/cc.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7 – 9 and 20 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view Knox, III et al. (USPN 4,851,272).

Brown discloses a flange having first and second sides (Figure 1, #16 and Column 2, lines 45 – 47) with a spout extending upwardly from the first side of the flange (Figure 1, #15) with sealing media, heat stakes, molded to the first side of the flange (Figure 1, #67). As seen from Figure 1, the flange and spout are integral with one another. The flange and spout are formed from a single first material, high density polyethylene (Column 3, lines 40 – 41), while the material molded or sealed over the flange is made from an ethylene octene material such as liner low density polyethylene (Column 3, lines 40 – 51). The material that is over molded, or covering is formed from a second material different from the first material with a lower density (Column 3, lines 40 – 52). A thread is formed on an outer surface of the spout (Column 2, lines 50 – 52). However, Brown fails to disclose the first material is an ethylene vinyl alcohol copolymer and wherein the second materials is formed from a composition including an

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ethylene-octene copolymer, wherein the second material further includes a maleated polyolefin, and the ethylene-octene copolymer is present in a concentration of about 75 percent by weight of the second material and the maleated polyolefin is present in a concentration of about 25 percent by weight of the second material.

Knox, III et al. teaches both a maleated polyolefin, a polyolefin mixed with an acid, and an ethylene octene copolymer, linear low density polyethylene, in a second material covering the flange of the spout (Column 2, lines 24 – 26) wherein the maleated polyolefin has a weight percent of about 18 (Column 2, lines 26 – 29) for the purpose of forming a material that is strong enough to withstand jostling without leaking the product (Column 1, lines 19 – 21).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the maleated polyolefin along with the ethylene octene copolymer in Brown et al. in order to form a material that is strong enough to withstand jostling without leaking the product as taught by Know, III et al.

Brown et al. discloses the claimed invention except for the first material being an ethylene vinyl alcohol. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use ethylene vinyl alcohol as the first material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

9. Applicant's arguments filed May 6, 2005 have been fully considered but they are not persuasive.

In response to Applicant's argument that the fitment of Brown uses a pair of stakes or spikes that project through the material and then melted or sealed to the packing material opposite the flange, while Brown does disclose the use of stakes, the stakes are being used to bond the packaging material to side of the box (Column 4, lines 30 – 33). The flange is heat sealed to the packaging material by a weld (Column 4, lines 25 – 27 and 42 – 44) formed by heat sealable layers, media, of the multilayer film forming the packaging (Column 3, lines 53 – 55).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 4,898,301 to Shick is cited to show the use of adhesive material used in combination with flanges of spouts to attach the spout to flexible packaging. JP 09132271 A is cited to the state of the art with regard to the use of a ring shaped film/sealing media used to attach a spout to a flexible packaging film.

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11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer
Examiner
Art Unit 1772

pln
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Harold Pyon
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

8/1/05